

Senate Bill No. 415

CHAPTER 72

An act to repeal Sections 737.4, 737.5, 737.6, and 737.7 of, and to repeal and add Section 737.3 to, the Public Utilities Code, relating to public utilities, and declaring the urgency thereof, to take effect immediately.

[Approved by Governor June 21, 1996. Filed with
Secretary of State June 21, 1996.]

LEGISLATIVE COUNSEL'S DIGEST

SB 415, M. Thompson. Public utilities: carriers.

Existing law provides for a procedure for claims made by highway carriers and freight forwarders, and provides for an alternative procedure when the claims are made to collect charges in excess of those originally billed by a highway carrier or freight forwarder under specified conditions.

This bill would eliminate the alternative procedure.

This bill would, instead, prohibit a highway carrier, a freight forwarder, a party representing either of these entities, or an assignee of either of these entities, based on a filed tariff or filed contract, from collecting or attempting to collect any additional charge in excess of the charge originally billed by the carrier or freight forwarder for transportation service previously provided, except where there are mistakes acknowledged by both parties or that are the result of intentional misrepresentation by the shipper. This bill would likewise preclude the liability of a person or entity against whom a claim for an additional amount has been brought based upon a filed tariff or filed contract except when there are acknowledged mistakes or the claim is the result of the intentional misrepresentation of the shipper.

Since existing law makes any public utility, as defined, and any corporation other than a public utility, which violates the Public Utilities Act guilty of a misdemeanor, and the provisions of the bill would be within the act, this bill would impose a state-mandated local program by creating a new crime.

The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.

This bill would provide that no reimbursement is required by this act for a specified reason.

This bill would declare that it is to take effect immediately as an urgency statute.

The people of the State of California do enact as follows:

SECTION 1. The Legislature finds and declares as follows:

(a) Public Law 103-305, effective January 1, 1995, generally preempted the state, among other things, from enacting or enforcing any law or regulation related to the price of intrastate transportation of property (other than household goods) by motor carrier.

(b) Among the provisions of state law preempted by that federal law was the state's filed rate doctrine.

(c) The filed rate doctrine required a motor common carrier of property to charge the rate set by the tariffs it had filed with the Public Utilities Commission, regardless of any contrary agreement the carrier may have made with a shipper.

(d) Enforcement of the filed rate doctrine was intended to maintain the integrity of the tariff-based system used to regulate the rates of motor common carriers of property prior to January 1, 1995.

(e) With certain limited exceptions not relevant to enforcement of the filed rate doctrine, motor common carriers of property have not filed tariffs with the Public Utilities Commission since January 1, 1995, and their tariffs previously on file with the commission have been canceled.

(f) Litigation is currently pending before the federal courts concerning whether or not Public Law 103-305 preempts enforcement of California's filed rate doctrine with regard to transportation services performed before January 1, 1995.

(g) Whether or not the federal law has preempted enforcement of California's filed rate doctrine with regard to transportation performed before January 1, 1995, the state's filed rate doctrine has outlived its usefulness, and its continued enforcement serves no public purpose.

(h) State law should be amended to provide that motor carriers of property (excluding household goods carriers) and their representatives and assignees can no longer enforce California's filed rate doctrine.

(i) Prior to January 1, 1995, the Public Utilities Commission required highway contract carriers of property to file contracts with the commission. It might be argued that, under that prior regulatory scheme, a contract carrier was required to charge the rate contained in its filed contract even if the carrier and shipper had agreed to a lower rate. Requiring a shipper to pay the higher rate contained in the filed contract would serve no public purpose.

SEC. 2. Section 737.3 of the Public Utilities Code is repealed.

SEC. 3. Section 737.3 is added to the Public Utilities Code, to read:

737.3. (a) (1) A highway carrier, as defined by subdivision (c), a freight forwarder, a party representing a carrier or freight forwarder, or an assignee of a carrier or freight forwarder shall not, based on a filed tariff or a filed contract, collect or attempt to collect

any additional charge in excess of the charge originally billed by the carrier or freight forwarder for transportation service previously provided subject to the jurisdiction of the commission, except where there are mistakes in billing that are acknowledged by both parties or that are the result of intentional misrepresentation by the shipper.

(2) Similarly, the person or entity against whom a claim has been made under the circumstances described in paragraph (1) shall not be liable for additional amounts based on a filed tariff or a filed contract, except where there are mistakes in billing acknowledged by both parties or that are the result of intentional misrepresentation by the shipper.

(b) For the purposes of this section, the term “claimant” shall mean the carrier or freight forwarder, or its assignee or representative making a claim for the collection of rates and charges in addition to those originally billed and collected for the transportation.

(c) “Highway carrier” or “carrier” means every corporation or person, their lessees, trustees, receivers or trustees appointed by any court whatsoever, engaged in transportation of property for compensation or hire as a business over any public highway in this state by means of a motor vehicle, except that “highway carrier” does not include:

(1) Any farmer resident of this state who occasionally transports from the place of production to a warehouse, regular market, place of storage, or place of shipment the farm products of neighboring farmers in exchange for like services or for a cash consideration or farm products for compensation.

(2) Persons or corporations hauling their own property.

(3) Any farmer operating a motor vehicle used exclusively in the transportation of his or her livestock and agricultural commodities or in the transportation of supplies to his or her farm.

(4) Any nonprofit agricultural cooperative association organized and acting within the scope of its powers under Chapter 1 (commencing with Section 54001) of Division 20 of the Agricultural Code to the extent only that it is engaged in transporting its own property or the property of its members.

(5) Any person exclusively transporting United States mail pursuant to a contract with the United States government.

(6) Any integrated intermodal small package carrier which is registered subject to Chapter 2.7 (commencing with Section 4120).

(7) Any household goods carrier, as defined in Section 5109.

(d) For purposes of this section, “mistakes in billing” include, but are not limited to, matters such as clerical errors, billing for transportation of a different commodity than the commodity actually shipped, and billing for transportation of a smaller amount of the commodity than the amount actually shipped.



(e) This section shall apply to all claims arising from transportation performed (in whole or in part) before January 1, 1995, including all lawsuits or claims pending on the effective date of this section.

(f) If any claim that qualifies under this section was settled by mutual agreement of the parties to the claim, or resolved by a final adjudication of a federal or state court, before the effective date of this section, the settlement or adjudication shall be treated as binding, enforceable, and not contrary to law, unless the settlement was agreed to as a result of fraud or coercion.

(g) If the claimant has filed, on or before the effective date of this section, a suit for the collection of additional freight charges, the claimant shall notify the person, or entity, from whom additional freight charges are sought of the provisions of this section within 30 days of the effective date of this section.

(h) If, on or before the effective date of this section, the claimant has demanded the payment of additional freight charges and has not filed a suit for the collection of additional freight charges, the claimant shall notify the person, or entity, from whom additional freight charges are sought of the provisions of this section within 30 days of the effective date of this section.

SEC. 4. Section 737.4 of the Public Utilities Code is repealed.

SEC. 5. Section 737.5 of the Public Utilities Code is repealed.

SEC. 6. Section 737.6 of the Public Utilities Code is repealed.

SEC. 7. Section 737.7 of the Public Utilities Code is repealed.

SEC. 8. No reimbursement is required by this act pursuant to Section 6 of Article XIII B of the California Constitution because the only costs that may be incurred by a local agency or school district will be incurred because this act creates a new crime or infraction, eliminates a crime or infraction, or changes the penalty for a crime or infraction, within the meaning of Section 17556 of the Government Code, or changes the definition of a crime within the meaning of Section 6 of Article XIII B of the California Constitution.

Notwithstanding Section 17580 of the Government Code, unless otherwise specified, the provisions of this act shall become operative on the same date that the act takes effect pursuant to the California Constitution.

SEC. 9. This act is an urgency statute necessary for the immediate preservation of the public peace, health, or safety within the meaning of Article IV of the Constitution and shall go into immediate effect. The facts constituting the necessity are:

In order to eliminate payment for charges imposed when claims are made to collect charges in excess of those originally billed by a highway carrier or freight forwarder at the earliest feasible time, it is necessary that this act take effect immediately.